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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

YONI CRUZ,

Defendant.

Case No.: CR 25–8 JSC

**DEFENDANT'S SENTENCING
MEMORANDUM**

Court: Courtroom 8, 19th Floor

Hearing Date: January 29, 2025

Hearing Time: 10:00 a.m.

INTRODUCTION

Yoni Cruz comes before this Court for a jointly requested combined change of plea and sentencing in a case involving street-level drug sales and possession. For this low-level drug activity, he will sustain an aggravated felony conviction and near-certain deportation. Originally from a Yoro, Honduras, Mr. Cruz came to the United States due to economic hardship and violence in his home country. Much like many people living in Honduras, he grew up in poverty with scarce resources, forcing him to work in the fields from the age of thirteen or fourteen. He left school after sixth grade to do so.

In 2021, after experiencing gang violence in his hometown, Mr. Cruz traveled to Tegucigalpa and began to work and save money for a journey to the United States. He later took a bus to Guatemala and eventually Mexico, where he worked for a year to save money to cross into the United States.

After a difficult crossing in 2023, Mr. Cruz had trouble finding work. He worked helping remodel houses for a time, but was unable to maintain steady work, and eventually began to entertain the idea of drug sales. That is what now brings him before this Court. Mr. Cruz no prior convictions. He has two drug arrests aside from this case, in March and June of 2024. This will be Mr. Cruz's first conviction and first felony. He will face substantial immigration consequences as a result. He will not only be subject to near-certain deportation back to Honduras, but will be ineligible for numerous avenues of relief in immigration proceedings and will become permanently inadmissible to the United States in the future.

Mr. Cruz takes responsibility for his actions and very much regrets any resulting harm. He intends to plead guilty at the hearing scheduled for January 29th and requests that the Court impose sentence on that same date. He respectfully requests that the Court impose the parties' agreed-upon sentence of time served plus one business day to be followed by three years of supervised release, a special search condition, and a stay-away order from the Tenderloin. In light of the proposed disposition, he requests that the Court decline to order preparation of a Presentence Report, pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A)(ii). Such a sentence is appropriate based on the factors delineated in 18 U.S.C. § 3553(a).

ARGUMENT

I. A Sentence Of Time Served Plus One Business Day Would Be Sufficient But Not Greater Than Necessary To Achieve The Sentencing Goals Of § 3553(a)

In sentencing Mr. Cruz, this Court must consider all the directives set forth in 18 U.S.C. § 3553(a); the Guidelines are only one factor among many to be considered by the Court. *See United States v. Booker*, 543 U.S. 220 (2005); *Kimbrough v. United States*, 128 S. Ct. 558, 570 (2007). “The overarching statutory charge for a district court is to impose a sentence sufficient, but not greater than necessary” to achieve the goals of § 3553(a). *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (internal quotations omitted). Those goals include the need to: (1) reflect the seriousness of the offense; (2) promote respect for the law; (3) provide just punishment for the offense; (4) afford adequate deterrence to criminal conduct; (5) protect the public from further crimes of the defendant; and (6) provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner. *See* 18 U.S.C. § 3553(a)(2). Section 3553(a) also directs the Court to consider a number of additional factors, including: the nature and circumstances of the offense, § 3553(a)(1); the history and characteristics of the defendant, § 3553(a)(1); the kinds of sentences available, § 3553(a)(3); the sentencing guideline range, § 3553(a)(4); pertinent Sentencing Commission policy statements, § 3553(a)(5); the need to avoid unwarranted sentencing disparities, § 3553(a)(6); and the need to provide restitution to any victims of the offense, § 3553(a)(7).

Pursuant to the plea agreement in this matter, the parties have agreed to a final offense level of 19. This calculation stems from a base offense level of 24 with a 3-level reduction for acceptance of responsibility and a 2-level reduction for Mr. Cruz having zero criminal history points. *See* Plea Agreement ¶ 6. The resulting advisory Guidelines range is 30-37 months.

A. The nature and circumstances of the offense

Mr. Cruz was arrested on January 6, 2025 as part of the government’s Fast Track initiative targeting cases arising in the Tenderloin for federal prosecutions. Like in many of these cases, Mr. Cruz was arrested for relatively minor drug quantities. Absent the initiative, such a case would normally be prosecuted in state court.

Mr. Cruz was making small drug sales in the Tenderloin and sold \$20.00 worth of

1 methamphetamine (2.5 grams) to an undercover police officer. Officers subsequently arrested Mr.
2 Cruz and a person that Mr. Cruz took the drugs from when making the sale. The police found on that
3 person 17.1 grams of methamphetamine, 2.3 grams of cocaine base, and 39.2 grams of fentanyl. The
4 quantities used by the parties in the plea agreement represent gross weights that include the weight of
5 packaging, so the net weight of the drugs would be even less. Mr. Cruz was immediately cooperative
6 with the police. This was a street-level drug offense that did not involve violence, weapons, or other
7 aggravating factors.

8 Mr. Cruz understands that circulating these substances can lead to serious and tragic
9 consequences. At the same time, Mr. Cruz was not a sophisticated drug trafficker. His involvement in
10 the trade was borne out of a lack of economic opportunity and did not result in significant
11 enrichment. Mr. Cruz possessed a small amount of drugs even as compared to other street-level
12 dealers. Comparatively, Mr. Cruz's offense is relatively minor, and does not warrant additional time
13 in custody.

14 Mr. Cruz took the earliest possible opportunity to waive indictment and plead guilty to the
15 charged offense. The Court should take into consideration such timely and extraordinary acceptance
16 of responsibility.

17 **B. The history and characteristics of Mr. Cruz¹**

18 By now, the Court is no doubt familiar with the widespread poverty, lack of opportunity, and
19 violence that plagues people living in Honduras and that has caused many of them to travel to the
20 United States in search of a better life. Mr. Cruz's life and background presents yet another example
21 of this same sad pattern. He was born in El Yoro, Honduras, and raised by loving but extremely poor
22 parents. As a child, Mr. Cruz had limited clothing, and although he always had food, there was not
23 always enough. Mr. Cruz left school after sixth grade to help his family working in the fields. As an
24 adult, he was attacked by a gang in his hometown in an attempt to force him to work with them.

25 Mr. Cruz has no convictions but two prior arrests. This is his first time in the United States. It is
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27 ¹ Because of the parties' requested expedited sentencing in this matter, there has been no pre-sentence
28 interview. To assist the Court, undersigned counsel will include in this section information normally
obtained in a pre-sentence interview.

1 a virtual certainty that Mr. Cruz will be deported after this case resolves. After his expected
2 deportation, Mr. Cruz plans to live outside of his hometown. He plans to find construction or
3 remodeling work. He will also reconnect with his family in the country.

4 The immigration consequences from this case for Mr. Cruz will extend beyond deportation.
5 This conviction is an aggravated felony for immigration purposes and will foreclose possible
6 pathways for Mr. Cruz to remain in the United States. He understands that he will be vulnerable to
7 serious penalties if he returns to the country. Additionally, the whole purpose of Mr. Cruz coming to
8 the United States, economic opportunity, has been frustrated. He has found it difficult to sustain
9 gainful employment, and now faces major consequences for trying to make money illegally.
10 Although the parties have agreed that a time-served sentence is appropriate in this case, Mr. Cruz will
11 spend an indeterminate amount of time in ICE custody awaiting deportation. He has no desire to
12 subject himself to such circumstances again, especially with the possibility of a significant prison
13 sentence prior to deportation.

14 For all the reasons set forth above, Mr. Cruz respectfully requests that the Court impose the
15 parties' agreed-upon sentence of time served plus one business day. He does not have any financial
16 assets and therefore is requesting that any fine be waived. Such a sentence is sufficient but not greater
17 than necessary to achieve the sentencing goals laid out in § 3553(a).

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19 Dated: January 27, 2025

Respectfully submitted,

20 JODI LINKER
21 Federal Public Defender
Northern District of California

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23 TAYLOR FATHERREE
24 Assistant Federal Public Defender
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